

EXHIBIT "A"

**Comments of the NAAG Telecommunications Subcommittee
to FTC Rules Implementing TDDRA**

**BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580**

In the Matter of:

**Proposed Telephone
Disclosure Rule**

FTC File No. R311001

**COMMENTS AND RECOMMENDATIONS OF THE
TELECOMMUNICATIONS SUBCOMMITTEE*
OF THE
CONSUMER PROTECTION COMMITTEE
OF THE
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL**

***ARIZONA, CALIFORNIA, CONNECTICUT, FLORIDA,
ILLINOIS, IOWA, KANSAS, MAINE, MINNESOTA,
NEW JERSEY, NEW MEXICO, NEW YORK,
PENNSYLVANIA, TENNESSEE, VERMONT,
WASHINGTON, WEST VIRGINIA AND WISCONSIN**

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EXECUTIVE SUMMARY

Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992 to curtail blatant deceptive and unfair practices which plagued pay-per-call services and to establish a basis for the development of legitimate pay-per-call services to provide consumers both convenience and value. Congress also recognized the role State Attorneys General have played to combat pay-per-call fraud by authorizing them to enforce the law.¹

The inception of pay-per-call services transformed everyone's telephone into an unlimited line of credit. Con artists tapped this line, using deception and fraud, and coerced payment of questionable charges with the implicit threat of disconnection of telephone services. Undoubtedly, hundreds of millions of dollars has been lost to fraudulent pay-per-call schemes during the past three years.

The Federal Trade Commission's proposed regulations, consistent with Congressional intent, seek to ensure that more information is available to consumers, that fraudulent practices are prevented and that a process is established for resolving consumer disputes with the pay-per-call industry. The States unequivocally support the adoption of the proposed regulations, assuming the amendments discussed in these comments are

¹These comments are submitted on behalf of the

incorporated. These amendments would enhance consumer protection and further restrict pay-per-call fraud, and include changes to:

--provide more meaningful advertising disclosures;

--expand the basis for "billing errors" to include unauthorized charges or disputes about service received;

--require a notice on bills that telephone service will not be disconnected for nonpayment of pay per call charges.

However, pay-per-call services' potential for fraud remains considerable. Expensive and protracted law enforcement actions alone are not a long-term solution to pay-per-call fraud. If fraud promoters perceive that current standards--which Congress sought to strengthen--are being diluted, scam operations exploiting pay-per-call technology to bilk the public surely will increase.

The States strongly urge that the Federal Trade Commission consider these recommendations and formulate regulations which take

INTRODUCTION

The Telecommunications Subcommittee of the National Association of Attorneys General Consumer Protection Committee welcomes the opportunity to submit these comments in support of the Federal Trade Commission's proposed rules to implement the Telephone Disclosure and Dispute Resolution Act of 1992. The proposal is designed to provide greater information to consumers, prevent fraudulent practices and establish a dispute resolution procedure within the pay-per-call industry.

The Federal Trade Commission is to be commended for what should prove to be an essential step in improving protection for consumers and establishing a foundation for the growth and development of the legitimate pay-per-call industry. The subcommittee strongly urges the Commission to adopt the proposed rules, after incorporating the strengthening amendments and additions to further restrict fraudulent pay-per-call offers and facilitate resolution of customer complaints, including the following:

- provide more meaningful advertising disclosures;
- expand the basis for "billing errors" to include unauthorized charges or disputes about service received;
- require a notice on bills for pay-per-call service that telephone service will not be disconnected for nonpayment of such charges;

--prohibit charging consumers fees for disputing pay-per-call charges; and

--prohibit specific deceptive practices such as misleading prize, credit and job offers.



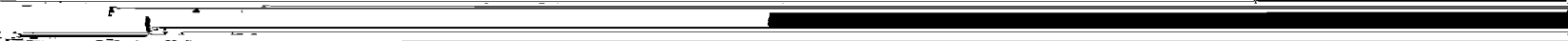








These comments consist of two parts. Part I outlines the role which State Attorneys General have played in combating fraudulent

PART I

STATE ATTORNEYS GENERAL EFFORTS TO CURB PAY-PER-CALL FRAUD.

Unscrupulous promoters seized upon the introduction of pay-per-call services in the late 1980's to bilk an unsuspecting public of hundreds of millions of dollars through deception and fraud. The growth of the pay-per-call industry was accompanied by a corresponding increase in consumer complaints. Initial unfair practices ranged from the use of electronic tones in TV commercials so young children could call a "900" number by holding a telephone receiver to a TV set to a pay-per-call sweepstakes offering a trip on a space shuttle. Scam artists repackaged consumer frauds such as deceptive credit, travel, employment and prize offers as pay-per-call services.

The success of early pay-per-call schemes was phenomenal. Investigations have revealed that fraud promoters used area code 900 numbers to obtain millions of dollars in a matter of months. Pay-per-call fraud was successful because 900 numbers and other pay-per-call services transformed everyone's telephone into an unlimited line of credit which con artists could tap through



been victimized were faced with the perceived prospect of paying the charge or losing telephone service. For pay-per-call schemes a regulated utility--the local telephone company-- removed a major obstacle for scam operations--collecting the money.

During the summer of 1990, ten State Attorneys General coordinated efforts to deal with the exponential growth in complaints about pay-per-call services. During December of 1990, this group, together with representatives of the Federal Trade Commission ("FTC" or "Commission") and Federal Communications Commission ("FCC"), hosted the 900 Forum, a hearing to obtain information from the public and industry about the emergent pay-per-call business. The result was a comprehensive report which described fraudulent practices prevalent in the pay-per-call business and made detailed recommendations to eliminate these abuses.

The National Association of Attorneys General ("NAAG") responded to the persistence of fraudulent pay-per-call promotions and established the 900 Number Committee as a subcommittee of NAAG's Consumer Protection Committee. Under the subcommittee auspices, States prepared model legislation, contributed to federal regulatory and legislative proceedings and coordinated state enforcement efforts. Legislative and regulatory initiatives were proposed in most States and became law in many.

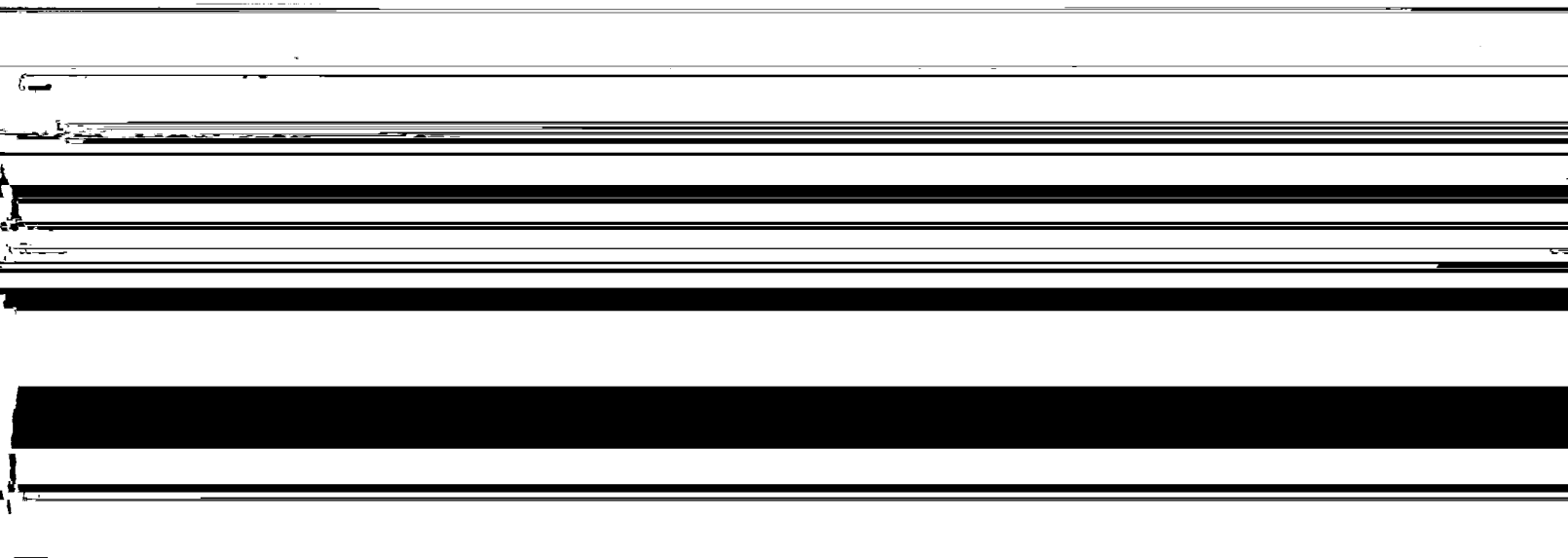
In the FCC rulemaking proceedings begun in March, 1991, 33 States joined in formal comments proposing comprehensive consumer protection measures. That fall, the FCC adopted rules which

mandated a preamble for pay-per-call services and prohibited disconnection of telephone service for nonpayment of pay-per-call charges. The states again petitioned the FCC to block fraudulent promoters who sought to evade the preamble by using toll-free 800

Equally significant is the current practice of deleting charges for pay-per-call services that are the subject of customer complaints. This practice places costs associated with unauthorized or deceptive pay-per-call promotions where it should be--on the providers of the services. Although pay-per-call service providers retain the right to pursue disputed charges, such actions are subject to existing laws governing debt collection practices and establishing due process for consumer disputes.

It is important to recognize that the apparent reduction in pay-per-call abuses did not arise independent of the efforts of State Attorneys General and other law enforcement officials.³ Although the attractiveness of pay-per-call technology to unscrupulous promoters, as well as their ingenuity in evading the intent of the law, is well-documented, rigorous law enforcement has curtailed many of the most flagrant deceptions. However, expensive and protracted law enforcement actions alone are not a permanent solution to pay-per-call fraud.

The status quo is precarious. If pay-per-call fraud purveyors perceive that voluntary and legal standards in place are being



watered down, abusive practices currently under control, will
return to the marketplace.

PART II

COMMENTS REGARDING PROPOSED PAY-PER-CALL SERVICE REGULATIONS

numbers may result in substantial charges independent of the call's duration.

Today, consumers responding to pay-per-call advertisements are more likely to have more accurate information about offered services than two years ago. If the providers comply, the preamble mandated by the FCC for most pay-per-call services and inter-exchange carrier rules ensure that callers have some information about the service before they incur charges. However, a brief preamble does not take the place of accurate disclosure in advertising. The function of the preamble is to identify the charge for the call as well as the offered service and to provide a consumer with a "last clear chance" to decide whether to go through with the transaction. By itself, a preamble is insufficient to ensure that consumers understand what is offered and are able to decide intelligently whether to purchase a pay-per-call service.

Proposed Rules

Title II of the Act requires that the Commission prescribe regulations prohibiting unfair and deceptive pay-per-call advertising practices. Both state and federal investigations and enforcement actions have uncovered the attempts of fraudulent

absolutely necessary to ensure that accurate pay-per-call price information is available to consumers.

The proposed price disclosure requirements appropriately specify what constitutes "clear and conspicuous" disclosure. The requirements should also include price information about interactive calls. Although pay-per-call providers may not be able to predict the exact length of particular interactive calls, the average duration and charge is easy to identify within a short time after service begins. At the present time, responsible pay-per-call providers voluntarily disclose such information in advertisements.

The proposed rules seem to permit pay-per-call businesses to solicit a caller who responds to a toll free number or in the course of a pay-per-service call to purchase other, unadvertised pay-per-call services. (Sec. 308.3(a)(1)(v).) The technological capability to transfer a pay-per-call customer to another service and impose additional or different charges not previously disclosed creates an obvious opportunity for fraud and deception. Disclosure of charges and conditions during the course of another pay-per-call transaction would not provide a consumer with a sufficient opportunity to reflect on the solicitation. The States recommend that such transfers, i.e., without the caller hanging up and re-dialing, be prohibited.

**B. THE PROMOTION OF SWEEPSTAKES BY PAY-PER-CALL PROVIDERS
MUST BE STRICTLY LIMITED TO PREVENT FRAUD.**

Misleading prize offers and phony sweepstakes promotions employing pay-per-call services continue to plague consumers.⁶ Promoters use the pretext of a valuable prize to entice customers to become ensnared in a variety of schemes. Some sweepstakes eventually provide "winners" with worthless coupons which require additional cash payments to use. Other offers promote no other good or service and only function to produce profit for a pay-per-call service.

Consumers are particularly vulnerable to promotions indicating

sweepstakes from the purview of all state lottery prohibitions.

C. STRICT STANDARDS MUST BE ADOPTED REGARDING PROGRAMS
DIRECTED TOWARD CHILDREN.

Pay-per-call services directed at children and young teens pose substantial risk of unfairness and deception to children and their parents. Sophisticated marketing may easily entice children and young teens to run up charges for stories, games or information about toys merely by dialing a telephone. This potential for abuse has been recognized by the telecommunications industry as well as law enforcement officials. It is noteworthy that beginning more than two years ago several inter-exchange carriers have either declined to lease numbers or placed restrictions on the use of

D. PAY-PER-CALL SERVICE REGULATIONS SHOULD BE EXPANDED TO PROHIBIT OTHER SPECIFIC UNFAIR AND DECEPTIVE PRACTICES AND LIMIT PROVIDERS' OPPORTUNITY FOR EVASION.

Congress specifically directed the Commission to promulgate rules to prevent abuses and prohibit practices which would evade or undermine the Act's objectives. (Secs. 201(a)(2)(J) and 201(a)(3). In view of the ingenuity of pay-per-service fraud promoters to obscure and conceal meaningful disclosures, the task delegated to the Commission is considerable.⁷

Proposed Rules

Section 308.5 of the proposal appropriately addresses many problems associated in the past with pay-per-call fraud. The States recommend that the Commission adopt the following modifications to strengthen this section:

--Specifically require that the preamble precede any other information in a pay-per-call message. Further, the rule should specify the sequence in which information is disclosed in the preamble. (Sec.308.5(a).)

--In addition to forbidding billing in excess of the amount stated in a preamble, prohibit billing for charges incurred in

⁷The length some operators have gone to feign compliance with disclosure requirements is remarkable. For example, post cards used to promote sweepstakes have used block printing formats for disclosure of odds which are very difficult to read.


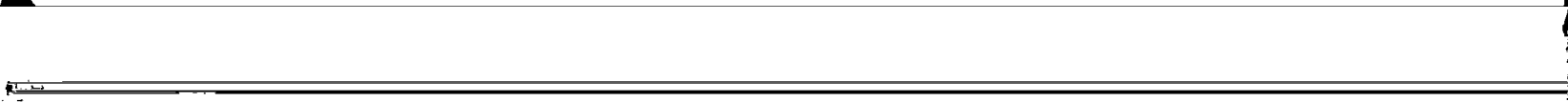


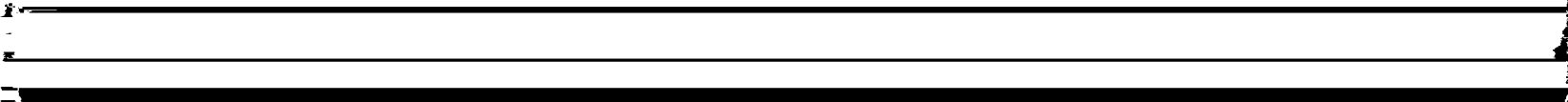


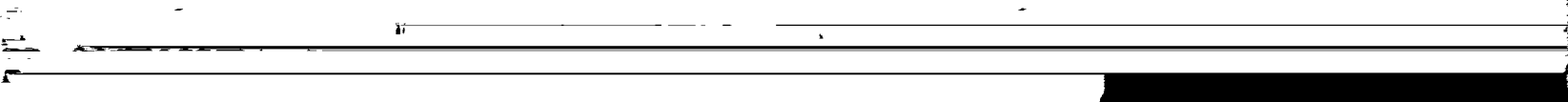


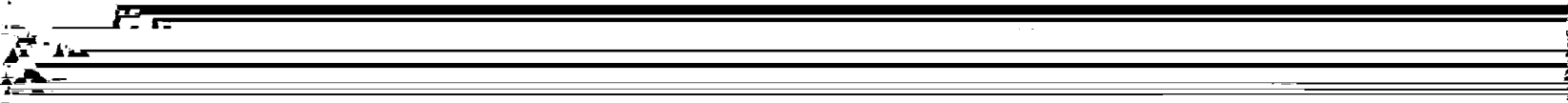

Similarly, some preamble messages have included advertising hype and otherwise obscured the information to be furnished consumers. Because of confusing disclosure formulations utilized by some companies following its 1987 regulations on local pay-per-call services, New York changed its disclosure requirements to specify the following preamble: "You have reached XXX-XXXX (program number). The price of this call is (provider selected price). You may now hang up and not be charged for this call."

violation of any applicable federal or State law, rule or regulation. (Sec. 308.5(e).)

--Prohibit charges for services provided in violation of any law, rule or regulation and require providers to correct credit reporting records when unlawful charges have been reversed. Sec. 308.5(j).

--Prohibit the use of the term "free" or words of similar import when a person must call a pay-per-call service to obtain the "free" service or good.

--Prohibit persons from misrepresenting or implying that a customer's failure to pay for pay-per-call service is a basis for



The States recommend that the Commission also formulate rules for other pay-per-call services with a record of consumer abuse and fraudulent practices.⁹

- E. BILLING ENTITIES SHOULD BE REQUIRED TO MAKE BILLING ADJUSTMENTS FOR PAY-PER-CALLS THAT ARE ALLEGEDLY DECEPTIVE, MISLEADING UNFAIR OR OTHERWISE IN VIOLATION OF STATE OR FEDERAL LAW OR WERE NOT AUTHORIZED BY THE INDIVIDUAL IN WHOSE NAME A BILL IS RENDERED.

The proposed rule should be modified to ensure that the practice presently followed by most local telephone companies and inter-exchange carriers for handling pay-per-call billing disputes is maintained. To accomplish this, the definition of "billing error" should be expanded to include instances in which a customer is billed for a service that is allegedly deceptive, misleading, unfair, or otherwise in violation of state or federal law, or which is not authorized by the customer in whose name the bill is rendered. Upon presentation of a bona fide claim, the charge should be removed from the bill, with service providers retaining rights to pursue collection to the extent allowed by law.

Following the direction contained in Title III of the Act, the proposed rules generally follow procedures for handling credit card billing disputes under the Truth-in-Lending and Fair Credit Billing Acts (15 U.S.C. §1601 et seq.). However, because a pay-per-call transaction is substantially different from the typical purchase

⁹The Act provides a limited time period for promulgation of rules. However, the Commission could promulgate proposed rules and continue proceedings to formulate rules on particular areas of

that a consumer makes using a credit card, the rules proposed require amendment to ensure that customers maintain their present ability to dispute charges for pay-per-call services which are found to be deceptive, misleading, unfair or in violation of other state or federal laws. Additionally, the proposed rules should be modified to retain customers' ability to dispute charges that

Based upon the States' experience, the majority of the claims of deceptive or misleading pay-per-call charges are associated with sweepstakes and prize awards, credit card and job offers, "free" travel promotions and "unclaimed funds" recovery services, and are often easily identified as deceptive, misleading or otherwise in violation of specific state laws. Claims of unauthorized calling are most frequently associated with "chat" or "adult" lines.

Generally, when a credit is provided, a customer is informed that the pay-per-call service may nonetheless continue to attempt to collect for the service.¹⁰ Typically, the inter-exchange carrier involved forwards to the pay-per-call business information regarding credits provided to customers. The pay-per-call business receives revenue net of the credits provided by its billing agent. To protect themselves from bad faith credit claims, pay-per-call providers have the technical ability through blocking to deny further service to a specific telephone number until prior charges are paid.

Proposed Rules

Proposed Section 307.8(a) could be read to alter this present pay-per-call billing adjustment practice by not defining "billing

¹⁰ Collection activities regarding pay-per-call charges which have been dropped from telephone bills have generated a considerable number of consumer complaints. Sometimes debt collection was not pursued for more than a year after the call was allegedly placed and the number from which the call was supposedly made had been reassigned to another consumer. Several states are investigating these activities and an enforcement action is pending against a Florida based collection firm. State of Tennessee v. Credit Collection Center, Inc., a/k/a "900 Recovery Experts", et. al., Davidson County Chancery Court, No. 93-526-II.

error" to include a claim that the underlying pay-per-call service was deceptive, misleading, unfair, in violation of State or federal law, or unauthorized and thereby exclude claims on these grounds from qualifying for a credit from a billing entity. To conform the proposed rules to present practice, the definition of "billing error" should be expanded to include these additional grounds for protesting a pay-per-call charge. Including such terms would appropriately place the burden of pursuing the collection of charges for questionable pay-per-call services on the pay-per-call service provider and not on the consumer, the inter-exchange

disputes,¹² are absolutely necessary and appropriate under the circumstances of a pay-per-call transaction.

First, unlike virtually all credit card transactions, a customer generally cannot fully evaluate the "service" he or she will actually receive prior to the time that the call is made to a pay-per-call service and a charge is assessed through the inter-exchange carrier's billing mechanisms.

Second, and most importantly, an expansion of the grounds for claiming a billing error will help ensure that consumers will not pay unlawful, questionable or disputed pay-per-call service charges because of a mistaken belief that continued access to telephone service would be threatened by non-payment. For most consumers, telephone service is as essential as heat and light; the telephone may be essential for their livelihood--or their safety. Empirical evidence indicates that a majority of customers believe that failure to pay a pay-per-call service charge can result in termination or suspension of their telephone service, even though

¹²Congress expected that the FTC's billing dispute regulations would diverge from the rules established pursuant to the Fair Credit Billing Act. In establishing billing rules the Commission was directed to consider:

[t]he extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts in order to protect customers, and in order to be cost effective to billing entities.

TDDRA, §301(d). To ensure that the FTC had complete discretion to adjust the Fair Credit Billing Act procedures to accommodate the unique circumstances presented by pay-per-call service transactions, Section 304 permits the Commission to add to the definition of "billing error" as it sees fit. §304(2)(H).